

...mentioned to Peter Hammer to assist him  
 ...his writings?  
 ...pre of those individuals?

...from your earlier testimony I gather that Peter  
 ...submit his writings to you for assistance?  
 ...right.

...Now, let's come back up to 2002. Prior to the  
 ...meeting -- the meeting at which no vote was taken,  
 ...which I think was February 11th of 2002 -- had you yet made  
 ...up your mind on how you intended to vote on the issue of  
 ...tenure?

**A I think by that point I was inclined against. I don't know  
 that made up my mind. I can't tell, but I was inclined  
 against.**

**Q All right. And as you sit here today, is it possible for  
 you to identify what factors influenced you to be inclined  
 against tenure prior to the first tenure meeting in 2002?**

**A Yes.**

**Q Could you tell me what those are?**

**A Predominantly, it was my own assessment of the writing.**

**Q Did you read the external reviews?**

**A Yes.**

**Q Did they influence you in either way?**

1 that Peter Hammer failed on both accounts?  
 2 **A I don't know that I didn't break it down that way. I mean,  
 3 ultimately it's a final judgment on tenure, and I don't  
 4 think I -- I don't recall, you know, putting it in separate  
 5 boxes.**

6 **Q Okay. But as you sit here today, thinking back on it --  
 7 let's take them one at a time. You've already indicated  
 8 that you thought his writing was flawed, so I think we  
 9 can --**

10 **A Yeah.**

11 **Q -- at least for our purposes agree that one of the reasons  
 12 you decided to vote against tenure for Peter Hammer is  
 13 because you thought his writing itself was flawed?**

14 **A Uh-huh (affirmative).**

15 **Q Correct?**

16 **A That's correct.**

17 **Q All right. Now, with regard to the other part of the  
 18 equation that you've identified, what did you think of him  
 19 personally in terms of his potential to do significant work  
 20 in the field?**

21 **MR. SERYAK: I'm going to object to the form of  
 22 the question.**

23 **Q You can answer.**

24 **MR. SERYAK: I mean, that does mischaracterize  
 25 his testimony.**

**A I think they left me believing that this was a question on  
 which reasonable minds could differ. And I think they gave  
 me some support in feeling that mine was a reasonable view.**

**Q And which reviews, in particular, made you believe your  
 opinion was reasonable?**

**A As best I recall, Elhauge and Blumstein. There may have  
 been others.**

**Q Let me ask you: When you're analyzing the writings of a  
 fellow faculty person for the purpose of voting on tenure,  
 are you looking at the writings to determine whether those  
 writings in and of themselves are significant, well-  
 written, contributive of the law in some important fashion,  
 or are you looking at the writings to analyze whether or  
 not the person behind them has the capacity to turn out  
 truly remarkable work?**

**MR. SERYAK: I'll just object to the form.**

**Q You can answer. Or some other purpose?**

**A I'm looking at the writings in order to form my best  
 judgment as to whether the candidate has satisfied our  
 tenure standards, and my understanding is that we're meant  
 to assess both the writing that's in the file and the  
 potential for being a leading scholar in the field. It's  
 suppose to be somebody on the way to becoming a leading  
 scholar in the field.**

**Q Okay. And was it your opinion before the 2002 tenure votes**

1 **Q You can answer the question.**

2 **A I thought it was not sufficiently likely that he would be a  
 3 sufficiently good scholar to justify an award of tenure.**

4 **Q Okay.**

5 (Deposition Exhibit 3 marked)

6 I show you what's marked Deposition Exhibit Number 3 and  
 7 ask you if you can identify that?

8 (Witness reviews exhibit)

9 **A I don't remember it all. I mean, I see --**

10 **MR. SERYAK: Well, just take your time and look  
 11 at it.**

12 **A I see on the face of it it's a message from our Public  
 13 Relations person asking me to help out with a media  
 14 request.**

15 **Q Okay. And your reply to that Public Relations person;  
 16 correct?**

17 **A Was suggesting three people who -- three colleagues who  
 18 might know something about it.**

19 **Q Okay. Now, the date of this particular e-mail, at least  
 20 from the printed copy, would be February 18, 2002?**

21 **A Uh-huh (affirmative).**

22 **Q And according to my recollection, that would be close to  
 23 the second meeting on tenure and after the first meeting on  
 24 tenure for Peter Hammer; correct?**

25 **A If you tell me that's according to your recollection, I'll**

of 11:45 a.m., be the document that you had referenced to in the prior exhibit, namely, the fact that you had written to Colker, Dressler, Gallanis, and Spindelmann at Ohio State?

**I'm sorry. I missed the beginning of the question, but, yeah, that's the -- that's the message that I had written, so --**

Okay. So the record is clear, then, I was produced a copy of the document you had referenced to.

**Right.**

Unfortunately, the date appears to have been clipped, but that's probably because the heading was so long.

**Probably so, yeah.**

Okay. With regard to Exhibit 7, fair to say that the observations you make are all true?

**I think that's fair to say within the context of the fact that I'm trying to help make a sale.**

Well, you weren't trying to mislead these people, were you?

**I wasn't trying to mislead them. I was trying to interest them in him and I was trying to emphasize factors why I thought they ought to -- ought to hire him.**

Well, you say he's a terrific guy and an excellent colleague; is that true?

**Yes.**

You indicate that in the tenure process you looked at

1 **A I have not.**

2 **Q All right. You consider yourself a good teacher?**

3 **A I think I am. Opinions differ on that.**

4 **Q Okay. And then you say, "So it comes down to scholarship"?**

5 **A Uh-huh (affirmative).**

6 **Q Right?**

7 **A Uh-huh (affirmative).**

8 **Q Was that your way of letting them know that scholarship was the undoing of his tenure application at the University of Michigan?**

11 **A I don't know that I wanted to let them know that that was the undoing. I thought I was limited in what I could say and clearly they were going to have to, as I said, exercise their own judgment.**

15 **Q Well, aren't you really trained to tip them off here that the problem that undid his tenure application at the University of Michigan was his writing and you fairly observed that, you know, minds might differ and you'd have to make your own judgment. Isn't that really what you're saying in this e-mail?**

21 **A I was not trying to tip them off to anything. I was trying to say what I felt I could in support of Peter's candidacy.**

23 **Q Do you believe that by telling them -- and I'm quoting -- so it comes down to his scholarship. On that, opinions differ and you can exercise your own judgment, closed**

scholarship, teaching, and service. I assume that's true?

**Uh-huh (affirmative).**

**Right?**

**Uh-huh (affirmative).**

His service has been obviously exemplary and extraordinary?

**Uh-huh (affirmative).**

Is that true?

**Yes.**

MR. SERYAK: Wait for the question and then try to say "yes" instead of "uh-huh."

THE WITNESS: Oh, sorry. Right. Okay. All right.

**That's right.**

And then you say, "Most notably the founding of a legal services program in Cambodia." That's true?

**That's true.**

"His teaching is universally regarded as terrific"; is that true?

**It's hard for me to remember. I remember very -- that they were very favorable reviews of the teaching. "Universally" is a pretty strong word; "terrific" is a pretty strong word, but his teaching was highly regarded.**

You indicate, "I believe, won two teaching awards here"?

**That's my best recollection, yeah.**

Did you win any teaching awards?

1 quote, that you were not trying to indicate to them that it was his writing that was a problem?

3 **A The difficulty that I'm having there is that you're suggesting that that was the message that I was trying to convey, and I think I was writing it from the other end. I was saying as much as I could in support, and then leaving it to them to exercise their judgment, which could well differ from mine.**

9 **Q Right. Did you think you were violating the rule of confidentiality in the tenure process, in particular the tenure meeting contents, by disclosing that much to these people at Ohio State?**

13 **A I didn't think so, because I was trying not to reveal what happened, and I say it's not telling tales out of school to say this much. This is a very delicate situation in which we have denied tenure and I'm trying to persuade respected scholars at another school that they ought to consider him for a lateral offer. So I was trying to do what I could within those confines to support Peter, and so I was saying things that I felt were fairly obvious on the record, on the -- just from the, you know, externals.**

22 **Q Okay. Now, you indicate that you were trying to be supportive of Peter before and after the tenure vote in 2002 by wishing him good luck beforehand, by writing a letter such as this afterwards; right?**